

Allstate Insurance Co.,) CV 08-3326-RSWL (FMOx)
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) **ORDER**
 Plaintiff,)
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 v.)
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 Richard Thacher, et al.,)
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 Defendants.)

This Court concluded a seven day jury trial in this matter on August 12, 2009. The jury returned a verdict in favor of Defendants Richard Thacher, Valerie Ann Thacher, and Guadalupe Trujillo on three issues. The jury found: 1) Plaintiff Allstate Insurance Company

1 ("Plaintiff Allstate") did not mail a notice of non-
2 renewal of the Comprehensive Personal Liability Policy
3 ("CPL Policy") to Richard and Valerie Thacher; 2)
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5 Plaintiff Allstate denied coverage under the Personal
6 Umbrella Policy ("Umbrella Policy"); and 3) the
7 arbitration award was not unreasonable or the product
8 of fraud or collusion.
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10 On September 18, 2009, the Court entered Judgment
11 for Defendants on Plaintiff Allstate's claim for
12 Declaratory Relief, and for Defendants' Counterclaims
13 for Breach of Contract and relief under California
14 Insurance Code § 11580 [173]. The September 18, 2009
15 Judgment awarded Defendants the full amount of the
16 underlying state court judgment in Trujillo v. Thacher,
17 the amount of attorneys' fees and costs expended by Mr.
18 Thacher in defending himself against Ms. Trujillo in
19 Trujillo v. Thacher, and interest.
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23 Plaintiff Allstate brought a Motion for Judgment as
24 a Matter of Law after the presentation of Defendants'
25 case in chief at trial [145]. The Court denied the
26 Motion. Subsequently, on October 6, 2009, Plaintiff
27 Allstate filed a Renewed Motion for Judgment as a
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1 Matter of Law and, in the alternative, Motion for a New
2 Trial [181] and a Motion to Alter or Amend the
3 September 18, 2009 Judgment [183].
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5 On November 23, 2009, the Court denied Plaintiff
6 Allstate's Renewed Motion for Judgment as a Matter of
7 Law [196]. First, the Court denied Plaintiff
8 Allstate's Renewed Motion on the grounds that the
9 mailing of notice was an issue of fact, and not law,
10 which the jury reasonably determined at trial. Second,
11 the Court denied Plaintiff Allstate's Renewed Motion on
12 the grounds that the jury's determination of coverage
13 gave rise to Plaintiff Allstate's duties to defend and
14 indemnify.
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18 With regard to Plaintiff Allstate's Motion for a
19 New Trial, the Court granted, in part, Plaintiff's
20 Motion [196]. The Court held that the amount of
21 damages awarded were excessive in light of the prior
22 settlement discussions between Defendant Trujillo and
23 Defendants Thacher. Therefore, the Court ordered a new
24 trial for the sole purpose of determining the
25 appropriate amount of damages.
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28 Moreover, the Court granted Plaintiff Allstate's

1 Motion to Alter or Amend the Judgment [196]. The Court
2 found that Defendants' Section 998 offer was not made
3 in good faith and held that it would not award
4 Defendants their post offer costs or interest under
5 California Civil Code section 3291. Accordingly, the
6 Court granted Plaintiff's Motion to Alter or Amend the
7 Judgment to the extent that no post offer costs or
8 interest shall be awarded to Defendants. The Court
9 held that the amount of the actual judgment shall be
10 determined by a jury in the new trial ordered by the
11 Court.
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15 On December 21, 2009, Defendants filed a Motion for
16 Reconsideration of the Court's November 23, 2009 and
17 June 30, 2009¹ Orders [201]. On March 24, 2010, the
18 Court denied the Motion for Reconsideration as to both
19 the June 30, 2009 Order and the November 23, 2009 Order
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22 ¹ On June 30, 2009, the Court issued an Order
23 regarding the Parties Cross-Motions for Summary
24 Judgment and/or Partial Summary Judgment. The Court
25 found that Plaintiff Allstate had received notice of
26 the claim and no separate notice was required to tender
27 under the umbrella policy. The Court further found
28 that the umbrella policy did not require the Thachers
to maintain primary coverage. Furthermore, the Court
found that Plaintiff Allstate had not acted in bad
faith [76].

1 because Defendants had failed to establish that there
2 had been a significant change in the facts or law with
3 regard to the Case [219]. Moreover, the Court denied
4 Defendants' request for appellate review pursuant to
5 Federal Rule of Civil Procedure 54(b).
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7 With respect to Defendants' request for
8 certification pursuant to 28 U.S.C. § 1292(b),
9 Defendants sought certification of two questions, one
10 for the June 30, 2009 Order and one for the November
11 23, 2009 Order. The June 30, 2009 Order addressed the
12 Motion for Summary Judgment on Defendants' bad faith
13 counterclaim. In its March 24, 2010 Order [219], the
14 Court denied Defendants' request to certify the issue
15 of bad faith for interlocutory appeal. However, as to
16 the November 23, 2009 Order, the Court granted
17 Defendants' request for interlocutory appeal. The
18 Court certified the following issue for appeal:
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23 Can this Court order a new trial, based solely on
24 the excessiveness of the damages awarded, if the
25 jury did not find the arbitration award
26 unreasonable or the product of fraud or collusion.
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28 On June 15, 2010, the Ninth Circuit issued an Order

1 denying the petition for permission to appeal pursuant
2 to 28 U.S.C. § 1292(b) [220].
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4 In its November 23, 2009 Order, the Court **GRANTED**
5 Plaintiff's Motion for a New Trial to determine the
6 appropriate amount of damages. A Court trial on the
7 issue of damages was set for March 15, 2011. On
8 March 1, 2011, the Court held a status conference with
9 the Parties and vacated the Court trial set for March
10 15, 2011. The Court instructed counsel to meet and
11 confer to determine whether this Case would proceed as
12 a trial *de novo* or a Court trial on the issue of
13 damages only.
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16 On April 8, 2011, the Parties submitted a Joint
17 Status Report to the Court. Defendants informed the
18 Court that they would seek a Court trial on the issue
19 of damages only. However, Plaintiff Allstate elected
20 to have this Case proceed as a trial *de novo*. On May
21 16, 2011, the Court informed the Parties that it was
22 contemplating vacating its November 23, 2009 Order
23 [196] granting Plaintiff's Motion for a New Trial on
24 the sole issue of damages as well as Plaintiff's Motion
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1 to Alter or Amend the Judgment. On May 31, 2011, the
2 Parties submitted further briefing to the Court with
3 regard to their respective positions on this issue.
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5 Upon further review of the arguments presented and
6 the overall litigation history in this Action, the
7 Court now **VACATES** its November 23, 2009 Order [196]
8 granting both Plaintiff's Motion for a New Trial on the
9 sole issue of damages as well as Plaintiff's Motion to
10 Alter or Amend the Judgment. An order granting a new
11 trial is interlocutory and not immediately appealable.
12 Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 34
13 (1980). Furthermore, an order granting a new trial may
14 be set aside after the expiration of the term at which
15 it was entered, and judgment rendered on the verdict.
16 Storey v. Storey, 221 F. 262, 263 (D.C. Wis. 1915).
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18 Upon further consideration, the Court finds that
19 the jury could not determine the amount of damages to
20 award to the Defendants in the first trial. Rather,
21 the jury was limited to determining whether the
22 arbitration award was unreasonable or the product of
23 fraud or collusion. The jury in a new trial will be
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1 limited to resolving this same issue, which could
2 potentially lead to a similar verdict to the one
3 returned by the jury in the first trial, thereby not
4 resolving this Court's disagreement with regard to
5 Defendant Trujillo receiving an excessively high
6 damages award.
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9 While the Court found the damages awarded to
10 Defendant Trujillo in the arbitration were excessive in
11 light of Defendant's actual injuries and the settlement
12 figures proposed initially, upon further review of the
13 arguments presented, the Court finds that proceeding
14 with a trial *de novo* could lead to a similar verdict to
15 the one returned by the jury in the first trial.
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18 Moreover, contrary to Plaintiff Allstate's
19 contentions, the Court did not err in presenting the
20 jury the following question in the special verdict form
21 [163] in the first trial: "Was the arbitration award
22 unreasonable or the product of fraud or collusion?" In
23 Plaintiff Allstate's initial filing of a proposed
24 special verdict form, Question No. 3 inquired as to
25 whether the arbitration award was the product of fraud
26 or collusion while Question No. 4 inquired, separately,
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1 as to whether the arbitration award was unreasonable
2 [139]. The Court finds that it did not err in
3 combining these two questions into a single question
4 and that Plaintiff Allstate's arguments indicating
5 otherwise are not compelling.
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7 Accordingly, the Court reasons that the interests
8 of judicial economy mandate that the Court **VACATE**
9 its November 23, 2009 Order [196] granting both
10 Plaintiff's Motion for a New Trial on the sole issue of
11 damages as well as Plaintiff's Motion to Alter or Amend
12 the Judgment. The Court instead reinstates the
13 September 18, 2009 Judgment [173], and that Judgment
14 will now serve as the Final Judgment that may be
15 reviewed upon appeal.
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21 DATED: June 30, 2011

22 **IT IS SO ORDERED.**

23 /S/ RONALD S.W. LEW
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26 **HONORABLE RONALD S.W. LEW**

27 Senior, U.S. District Court Judge
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